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OGC Has Reviewed

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55-2632

October 25, 1955

MEMORANDUM FOR: Deputy Director (Support)

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SUBJECT: Travel Expenses of Dependents [REDACTED]
[REDACTED]

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1. [REDACTED] employees stationed at [REDACTED] have appealed to the Inspector General the denial in part of travel claims for the advance travel of their dependents incidental to home leave in 1953. The Inspector General, in a memorandum to the Deputy Director (Support) dated 15 September 1955, has recommended that the employees be relieved of the costs assessed. The Deputy Comptroller, by memorandum to the Deputy Director (Support) dated 17 October 1955, commented on the recommendations of the Inspector General.

2. The facts, as presented in the above memoranda, indicate that incident to forthcoming home leave the employees requested authorization for advance travel of their dependents. The requests were approved. The dependents left [REDACTED] in what is known as the "on" travel season, when fares are higher than in the "off" season. As a result, the dependents incurred higher travel costs than they would have incurred had they traveled with the employees.

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3. A claim for these extra costs has been denied on the ground that the incurring of extra costs in such a manner constituted failure to exercise the requisite care required by Standardized Government Travel Regulations, paragraph I, 1.

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This language is substantially adapted from the Foreign Service Act of 1946 (P.L. 724, 79th Cong.) and the controlling regulation is No. 30-1A, which provides that travel and transportation expenses may be paid in accordance with the provisions of P.L. 600, 79th Cong., P.L. 92, 81st Cong., P.L. 830, 81st Cong., Agency and other appropriate legislation, regulations issued thereunder, the Standardized Government Travel Regulations, the Foreign Service Regulations, and as specified in Agency Regulations.

5. Since [] are assigned to permanent-duty stations outside the continental United States, its territories and possessions, []

[] Foreign Service Regulations issued in pursuance of the Foreign Service Act, and the Standardized Government Travel Regulations when not in conflict with Agency and Foreign Service Regulations. The Foreign Service Regulations provide in section 125.1 that the Department may authorize dependents to return to the United States at Government expense in advance of the employee when such action has been determined to be in the best interests of the Foreign Service in accordance with Foreign Service Travel Regulation 2.22. The Agency regulation controlling the advance return of dependents is substantially the same as the Foreign Service Regulation.

[] which provides that Headquarters shall authorize the return of dependents to the United States in advance of the employee when it has been administratively determined that it is in the best interests of this Organization. In paragraph 125.12 of Foreign Service Regulations, the standards for authorization of advance travel of dependents are set forth. This provides several factors which may be considered to justify advance travel of dependents. These factors are all reasons personal to an individual and they are not the exclusive factors which may be considered to justify advance travel.

6. In light of the standards set up by the Foreign Service Regulations and Agency Regulations, it is apparent that authorization of advance travel of dependents must be based upon a finding that it is in the best interests of the Agency. However, this finding will normally be based upon a justification personal to the individual. It need not be considered a contradiction in terms to say that it is in the best interests of the Agency to grant a privilege for the personal convenience of the employee. Neither does the fact that the privilege granted does not result in the greatest economy serve to alter an appropriately made determination that it is in the best interests of the Agency. The appropriate administrative determination that advance travel was in the best interests of the Agency was made in the cases of the []

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and [] dependents. That determination was a factual one made in accordance with appropriately delegated authority, and we cannot reverse or review it. Therefore, in the absence of a showing of fraud or collusion, the determination that the advance travel of the dependents of [] was in the best interests of the Agency must stand.

7. Several Comptroller General Decisions thought to be in point have been called to our attention. None of these decisions is controlling in this case. They are as follows:

- (a) 26 Comp. Gen. 864 - This case involved the question of travel of dependents subsequent to the completion of home leave travel and return to a new post by a Foreign Service employee. The factual situation is such that a decision based upon it could not control this case. In any case, it was decided under the terms of the Foreign Service Act of 1931, which is no longer in force.
- (b) 23 Comp. Gen. 160 - This Decision is based upon the Administrative Expense Act of 1946 (P.L. 600, 79th Cong.) which is not controlling in the case of travel of employees of this Agency assigned to permanent-duty stations outside the continental United States, its territories and possessions. However, it is interesting to note that even under the Administrative Expense Act, the Comptroller General would allow reimbursement for the cost of advance travel of dependents after the employee had actually traveled. The Comptroller General did not decide upon the question of extra costs incurred through advance travel.
- (c) 31 Comp. Gen. 134 - There is no indication in the decision as to whether the employee concerned here was traveling under the authority of the Administrative Expense Act or the Foreign Service Act, or some other law. In any case, this decision does not involve advance travel. The controlling factor in the case was the fact that there was no showing that the lowest first class accommodations could not have been obtained if an application had been made for them shortly after the employee's travel authorization was issued. The dependent here not only traveled some months after the employee had traveled, but failed to apply for accommodations until shortly before she actually traveled and some time after the travel authorization was issued.
- (d) 32 Comp. Gen. 194 - The employee here was working for the Department of Agriculture in the Point IV Program, and

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his travel was governed by the Administrative Expense Act of 1946, as modified by certain Foreign Service Regulations. There is no indication that the date of the dependent's travel would have had any effect upon the travel costs which could be reimbursed. Here the dependent elected to travel by an indirect route and reimbursement for the lowest first class accommodations on a direct route were authorized.

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8. [] and their dependents complied with the regulations governing travel of employees of this Agency. They requested authorization for advance travel of their dependents and this authorization was granted. In the absence of fraud or collusion, the Administrative determination that advance travel was in the best interests of the Agency must stand, and the travel authorization remains valid. There is no provision in law, Agency Regulations, or controlling Foreign Service Regulations that extra expenses incurred solely because of authorized advance travel of dependents are not reimbursable.

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9. It is the opinion of this Office that [] may be reimbursed for the cost of travel of their dependents, including the extra transportation costs incurred solely because the dependents traveled in the "on" season, although the cost to the Government would have been less if the dependents had traveled at the same time as the employee, that is, in the "off" season.

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[]
Office of General Counsel

Attachments

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